

CATHY PROSSER WILCOX
CLERK OF COURTS
HANCOCK COUNTY COURT OF COMMON PLEAS
300 SOUTH MAIN STREET
FINDLAY, OH 45840
(419) 424-7037

SUMMONS

Case Number: 2018 CV 00069

Plaintiff(s):

FINDLAY CITY OF
OHIO MUNICIPAL CORP
318 DORNEY PLAZA, ROOM 310
FINDLAY, OH 45839

VS

ARGONAUT INSURANCE COMPANY
ATTN MARK E WATSON III, CEO
175 EAST HOUSTON ST
SUITE 1300
SAN ANTONIO, TX 78205

TO THE ABOVE NAMED DEFENDANT(S):

You are hereby summoned that a complaint (a copy of which is hereto attached and made a part hereof) has been filed against you in this court by the plaintiff(s) named herein.

You are required to serve upon the plaintiff(s) attorney, or upon the plaintiff(s) if he/she/they have/has no attorney of record, a copy of your answer to the complaint within twenty-eight (28) days after service of this summons upon you, exclusive of the day of service. Said answer must be filed with this court within three (3) days after service on plaintiff(s) attorney.

The name and address of the plaintiff(s) attorney is as follows:

DONALD J RASMUSSEN
318 DORNEY PLAZA
ROOM 310
FINDLAY, OH 45840

If you fail to appear and defend, judgment by default will be taken against you for the relief demanded in the complaint.

Date: March 6, 2018

Cathy Prosser Wilcox

Clerk


Deputy Clerk



HANCOCK COUNTY, OHIO
FILED

2018 MAR -2 A 10:54

CATHY PROSSER WILCOX
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF HANCOCK COUNTY, OHIO

CITY OF FINDLAY,
An Ohio Municipal Corporation
318 Dorney Plaza, Room 310
Findlay, OH 45840

Case No. *2018 CV 69*

Plaintiff

Judge Starn

v.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND OTHER RELIEF**

ARGONAUT INSURANCE COMPANY
175 East Houston St, Suite 1300
San Antonio, TX 78205

Defendant

Donald J. Rasmussen (0022439)
Attorney for Plaintiff, City of Findlay
318 Dorney Plaza, RM 310
Findlay, Ohio 45840
PH: (419) 429-7338
Fax: (419) 424-7245
drasmussen@findlayohio.com

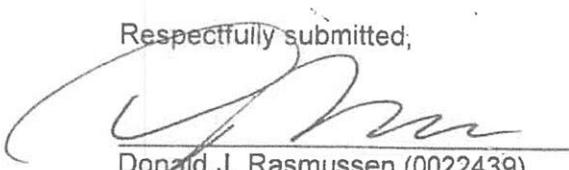
1. Argonaut Insurance Company is an insurance company which is, and was on the 27th day of May, 2011 licensed and engaged in the business of selling insurance in the State of Ohio.
2. On May 27, 2011, Plaintiff, Gary L. Bibler, was traveling east on East Sandusky Street in the City of Findlay, Ohio when his vehicle was struck by the Defendant, Jill D. Stevenson at the intersection of Wilson Street and East Sandusky Street.
3. Prior to May 27, 2011, the Argonaut Insurance Company issued a policy of Insurance No. PE 4621526-00 covering the City of Findlay and its employees at the time of the May 27, 2011 accident. Said policy had an effective date of July 21, 2010.
4. On May 17, 2013, Plaintiffs Gary L. Bibler and Yvonne M. Bibler filed their complaint against Defendant, City of Findlay, alleging that Findlay was negligent in keeping the public roads in repair and other negligent failure to remove obstructions from the public roads. Claim No. TNT-0141514

DONALD J. RASMUSSEN
DIRECTOR OF LAW
CITY OF FINDLAY
MUNICIPAL BUILDING
318 DORMEY PLAZA
FINDLAY, OHIO 45840

ASSISTANT
DIRECTORS OF LAW
ALAN D. HACKENBERG
ROBERT E. FEIGHNER, JR.
STEPHANIE M. WYKES
ELLIOTT T. WERTH
314 W. CRAWFORD ST.
FINDLAY, OHIO 45840

5. On or about June 18, 2013, the City of Findlay filed its answer to Plaintiff's Complaint alleging, among other things, that it was immune to liability in accordance with Ohio Revised Code Chapter 2744.
6. On December 6, 2013, the City of Findlay filed for Summary Judgement which was ultimately granted pursuant to Judgment Entries of the Hancock County Common Pleas Court dated April 8, 2014 and May 14, 2014.
7. Plaintiffs Gary L. Bibler and Yvonne M. Bibler subsequently filed their Notice of Appeal to the Third District Court of Appeals which affirmed the decision of the Hancock County Common Pleas Court on September 14, 2015.
8. Plaintiff's filed an appeal to the Supreme Court of Ohio and on December 29, 2016, the Supreme Court of Ohio reversed the Third District Court of Appeals and remanded the cause to the Trial Court for further proceedings consistent with the opinion rendered therein. A subsequent motion for further reconsideration filed by Defendant, City of Findlay was denied on March 15, 2017.
9. Argonaut Insurance Company refuses to defend the City of Findlay based upon a breach of the insurance contract citing the insuring agreement at Section I and Section IV, paragraph 2(a) and (c) of the General Liability Conditions.
10. The City of Findlay timely notified the Agent of Record, United Insurance Service, of the receipt of said suit and allegations contained therein, and discussed the various issues of governmental immunity as well as the various and overwhelming number of court cases supporting the position of the City of Findlay in a timely fashion.
11. The City of Findlay was able to secure Summary Judgment in its favor and successfully defended an appeal to the Third District Court of Appeals before the Supreme Court of Ohio, in direct intervention of the legislative enactment contained in Section 2744.02(B)(5), remanded the case back to the Common Pleas Court, Hancock County, Ohio.
12. It is well-settled that when an insurer's denial of coverage is based upon an insured's breach of a prompt notice provision in the policy of insurance that the insurer must be prejudiced by the insured's delay in giving notice. Ferrando et al. v. Auto-Owners Mutual Insurance Company et al. (2002) 98 Ohio St.3d 186, 781 N.E.2d 927.
13. Argonaut Insurance Company is not and will not be prejudiced as a result of the actions of the insured, City of Findlay, Ohio and is therefore obligated to defend the City of Findlay in this claim.

Respectfully submitted,



Donald J. Rasmussen (0022439)
Attorney for Plaintiff, City of Findlay

I, the undersigned Clerk of the Common Pleas Court
within and for said Hancock Co., do hereby certify
that the foregoing is a true and correct copy of the

original Complaint _____

on

file in this office.

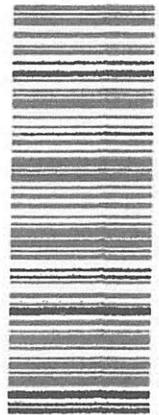
Carey Prentiss Wilcox
Clerk of the Common Pleas Court
By: J. M. Maden Turner

CATHY PROSSER WILCOX
CLERK OF COURTS
HANCOCK COUNTY COURT HOUSE
FINDLAY, OHIO 45840

RETURN RECEIPT REQUESTED
SHOW TO WHOM, DATE AND
ADDRESS WHERE DELIVERED

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2018 CV 00069
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ARGONAUT INSURANCE COMPANY
175 EAST HOUSTON ST
SUITE 1300
SAN ANTONIO, TX 78205

ARGO GROUP
SAN ANTONIO MAILROOM
MAR 12 2018

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PLEASE FORWARD. THIS ENVELOPE
CONTAINS A LEGAL DOCUMENT.

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